Exeter Finance Corp. *and* Bradley Goldowsky. Case 03–CA–158382

August 2, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

The General Counsel seeks summary judgment in this case on the grounds that there are no genuine issues of material fact as to the allegations of the complaint and that the Board should find, as a matter of law, that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing a mandatory arbitration agreement that prohibits its employees from engaging in class or collective litigation in all forums.

Pursuant to a charge filed by Bradley Goldowsky on August 20, 2015, the General Counsel issued the complaint on November 27, 2015, and an amended complaint on December 3, 2015. The amended complaint alleges that, at all material times, the Respondent has maintained the Mutual Arbitration Agreement (the Agreement) that all of its employees are required to sign as a condition of employment. It further alleges that by maintaining the Agreement, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, thereby violating Section 8(a)(1) of the Act. Finally, the complaint further alleges that the Respondent violated Section 8(a)(1) of the Act when it sought to enforce the Agreement on August 11, 2015, by filing a motion to compel arbitration and stay the Charging Party's class-action lawsuit alleging violations of the Fair Labor Standards Act in the United States District Court for the Western District of New York.[1]

On December 17, 2015, the Respondent filed an answer to the amended complaint admitting all of the material factual allegations in the complaint, but denying the legal conclusions.

[1] *Bradley Goldowsky v. Exeter Finance Corp.*, Case No. 1:15-CV-00632 (United States District Court, Western District of New York).

On January 12, 2016, the General Counsel filed a Motion to Transfer Proceedings to the Board for summary judgment and issuance of a Decision and Order, along with a memorandum of law in support of its motion. On January 20, 2016, the Respondent filed a response to the General Counsel's motion, consenting to the transfer of proceedings to the Board but opposing the General Counsel's request for summary judgment.

On February 10, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The General Counsel and the Respondent both filed responses on March 25, 2016. The Respondent filed its reply on April 25, 2016.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The General Counsel and the Respondent agree, and we find, that there are no issues of material fact warranting a hearing. In support of the motion for summary judgment on the complaint's allegations, the General Counsel relies on the Board's decisions in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), holding that the maintenance and enforcement of an arbitration agreement requiring employees to waive the right to participate in class or collective actions in all forums, whether arbitral or judicial, violate Section 8(a)(1) of the Act.

Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S.Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at __, 138 S. Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at __, 138 S.Ct. at 1619, 1632.

Accordingly, in light of the Supreme Court's decision in *Epic Systems*, which overrules the Board's holding in *Murphy Oil USA, Inc.*, we deny the General Counsel's Motion for Summary Judgment and we will dismiss the complaint.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. August 2, 2018

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John F. Ring, Chairman

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD